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SIPDIS

State for EAP/CM - JYamamoto and EB/IPE - EFelsing
USTR for China Office - AWinter; IPR Office - RBae; and OCG
- SMcCoy
Commerce for National Coordinator for IPR Enforcement -
CIsrael
Commerce for MAC 3204/ACelico, LRigoli, ESzymanski
Commerce for MAC 3043/McQueen
LOC/ Copyright Office - MPoor
USPTO for Int'l Affairs -- LBoland
DOJ for CCIPS - Asharrin
DOJ for SChembtob
FTC for Blumenthal
FBI for LBryant
DHS/ ICE for IPR Center - DFaulconer
DHS/CBP for IPR Rights Branch - PPizeck

SENSITIVE

SIPDIS

E.O. 12958: N/A

TAGS: [KIPR](#) [ETRD](#) [ECON](#) [WTRO](#) [CH](#)

SUBJECT: CHINA MISSION 2007 SPECIAL 301 RECOMMENDATION:
PRIORITY WATCH LIST AND CONTINUED SECTION 306 MONITORING
(PART TWO)

REF: (A) 2006 BEIJING 05968

(B) 2006 BEIJING 10459
(C) 2006 BEIJING 24195
(D) 2006 GUANGZHOU 15230
(E) 2006 GUANGZHOU 21191
(F) 2007 SHANGHAI 1774
(G) 2007 SHANGHAI 1866
(H) 2006 CHENGDU 946
(I) 2006 CHENGDU 1095

Summary

¶1. (SBU) This is part two of the Mission's reporting on "Special 301" related developments. The Mission's recommendations that China should once again be placed on the Priority Watch List, with Section 306 monitoring, and considered for an appropriate WTO case on IPR, were set forth in the first cable. This cable focuses on developments in IPR enforcement. Although there remain certain exceptions, the principal challenge that rights holders face in China is not the TRIPS incompatibility of the law, but rather the enormous difficulties in enforcing the law as written. These issues are particularly acute in

certain fields, such as criminal copyright law. Additional cables are being prepared on local enforcement issues.

China's Three Part System: Civil, Criminal and Administrative

¶2. (SBU) China's enforcement system consists of three components: civil, criminal and administrative. Standards for initiating a civil, criminal, or administrative action are different, as is the scope of activities encompassed by a violation of the relevant legal process. For example, not all copyright infringements under China's copyright law are criminalized. Moreover, administrative copyright action may only be taken when the infringing action harms "the public interest." Generally speaking, the broadest scope of infringing activity is captured by the civil system. The systems additionally differ from each other in that they: have different levels of deterrence; use different procedures and enforcement officials; and have different costs of procuring a remedy. There are also different standards for: seizing infringing goods, materials and equipment or assets; referring cases from one system to the other; preserving and using evidence; transparency, etc.

Using Chinese Statistical Data

¶3. (SBU) China maintains extensive IPR statistical data that can be useful in evaluating the strengths and

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weaknesses of its three-part IPR system. Many Chinese agencies also maintain statistical data on the number of foreign-related cases, which can be useful in determining the extent to which foreign rights holders are being fairly treated under China's system. However, there is no consistent definition of what constitutes a "foreign-related case" - for example, whether it is based on the ultimate owner of the right, the location of the litigant, or whether a Chinese litigant has a foreign investor. The increasingly active, but still low level of foreign involvement in IPR enforcement is a characteristic of China's enforcement system overall, with the sole exception of Customs enforcement, where Chinese officials have informed the Mission that foreign rights holders predominate. In evaluating the statistical data, it is important to keep in mind that overall goals of IPR enforcement are to deter and reduce infringing activity. This means that, at a minimum, potentially deterrent cases must be well publicized in order to have an impact. Increased enforcement alone may mean that a problem is being deterred, or that the problem is growing. Statistical comparisons between countries are often difficult to make because of differences in infringing activities, differences in compensation and punishment, the differing availability of civil, criminal, or administrative remedies, and other factors. Given China's pre-WTO legacy of a separate legal regime for foreigners and increasing nationalism in IPR matters, the United States is also concerned about the number of cases brought involving foreign rights holders.

Year End 2006 Statistics Not Yet Available

¶4. (SBU) China's IPR statistics data for a given year are generally not made available at the earliest until March/April of the following year. The Mission will seek to update the data provided herein as it becomes available.

15. (SBU) Anecdotally, it remains quite difficult and expensive for a foreign rights holder to bring a criminal IPR case in China. While QBPC reports that there were larger numbers of successfully prosecuted IP criminal cases in 2006 than in 2005, the majority of members continued to have limited experience in this area. U.S. copyright industries also report continuing difficulties in bringing criminal IPR cases before local enforcement agencies. In addition, the Trade Facilitation Office at the Embassy has handled several cases involving China's rejection or dismissal of criminal IPR cases involving U.S. rights holders which appeared to involve infringing activities conducted on a commercial scale.

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16. (SBU) For several years, USG has looked to the quantity and quality of China's overall criminal IPR investigations, prosecutions and convictions (both cases initiated and concluded) as a benchmark for determining the deterrent capacity of China's IPR system. This data has become especially important after the promulgation in December 2004 of a revised judicial interpretation, which lowered many criminal thresholds for IP crimes. During the December 2006 meeting of the IPR Working Group, China's Supreme People's Court compared statistical data for January-August 2006, with similar statistics for 2005 and 2004. There was a 15% growth rate in arrests and a 5.6% growth rate in prosecutions in 2004 (presumably for the calendar year), compared to a 40.4% growth rate in arrests and a 51.7% growth rate in prosecutions for 2005 (presumably for the calendar year). Arrests increased by 47.8% from January - August 2006, and prosecutions increased by 51.8% during this period. This data, however, may have included IPR-related prosecutions for "fake and shoddy goods" and "illegal business operations," which can occasionally obscure whether the underlying offense is an IPR-offense or a regulatory offense, which may include an IP element. According to industry reports, overall there were 796 criminal cases handled in 2006, an increase of 52% compared to 2005 (Speech of Deputy Chief Judge Xiong Xuanguo at the Third Global Anticounterfeiting Congress in Geneva, January 2007).

17. (SBU) This trend towards increasing criminal IPR cases was also evident in 2005, and may have continued into 2006. In 2005, the number of criminal IPR cases of first instance initiated increased year to year over 2004 by 28 percent to 3,567. Of these cases, 524 involved IPR crimes under the IPR section of the criminal code, an increase of 35 percent. In addition, there were 1,117 cases involving fake and shoddy goods, an increase of 16 percent, and 1,926 were for illegal business operations, an increase of 34 percent. The number of cases resolved was 3,529, an increase of 28 percent, involving 5,336 people, an increase of 31%. As a result of these cases, 2,963 people (or 56 percent) were sentenced, an increase of 24 percent. Among cases resolved during 2005, there were 505 convictions of crimes under the IP section of the criminal code, involving 741 people. There were 1,121 fake and shoddy goods cases involving 1,942 people, and 1,903 illegal business operation cases, involving 2,653 people. Overall, the number of individuals sentenced increased by 31 percent, among which 2,963 suspects were sentenced to a fixed term imprisonment, or an increase of 24 percent. As discussed below, the Chinese data for 2006 is thus far being presented in a manner that is difficult to compare. By comparison, in a recent speech, the Vice President of the Supreme people's Court stated that in 2006 there were 3,508 people convicted and sentenced. (China's Top Judge: Crackdown on Crime Promotes Social Stability, Human Rights protection, Xinhua, Mar. 13, 2007).

Still Limited Criminal Copyright Cases

18. (SBU) The aggregated data China provides obscures the limited number of criminal copyright cases that China has prosecuted since WTO accession. In its Section 301 report, IIPA estimates the total number of criminal copyright cases since China's WTO accession at 51, very few of which involved American rights holders. During the past several years, the Mission has made repeated requests, with limited results, to China's enforcement agencies for data on criminal copyright cases, especially cases involving foreigners. Although there have reportedly been a few pioneering criminal cases involving Internet infringement, the burgeoning Internet piracy environment further underscores the need for a dramatic ramp-up in Internet copyright enforcement, including modernization of laws and enforcement resources.

Separate Data on Criminal Copyright Cases for 2005
Unavailable

19. (SBU) In January 2007 China published the 2006 IPR Yearbook, which further belies the assertion that China has a criminal copyright remedy available. In the 2005 IPR Yearbook, China reported only 14 concluded criminal copyright cases for 2004, as well as 321 concluded trademark related cases and 48 concluded trade secret related cases. Of these criminal cases, only five people were sentenced to more than five years imprisonment; and only one case involved confiscation of assets. China has changed the reporting in this yearbook from 2004 to 2005 to remove separate references to criminal copyright cases. We believe that the change in data reporting in this Yearbook may in fact be intended to obscure the possible TRIPS deficiency in lack of an available criminal copyright remedy.

Continued Prosecutions Under Illegal Business Operations
Laws

110. (SBU) Chinese enforcement officials repeatedly note that they bring criminal cases more easily under illegal business operations laws (Article 225 of the Criminal Code) with more deterrent penalties. Arguably, prosecuting under "illegal business operations" is easier if one need not provide the ownership of each title that is infringed. However, China can also facilitate prosecution of criminal copyright cases by reducing procedural burdens and better engaging rights holders. Positive steps in this direction might include sharing of optical disc exemplars, enabling foreign trade associations to staff their offices with more than five people, and specifically authorizing use of statistical sampling techniques, such as apparently is done

in Jiangsu Province, among other steps. China's unwillingness to provide detailed information on criminal copyright cases as part of the "Article 63" request further underscores the weakness of China's criminal copyright data. Five years after WTO accession, the continuing lack of transparency in "illegal business" cases makes it difficult to determine whether this law is affording any meaningful relief to U.S. rights holders.

Increased Criminal Justice Cooperation Remains A Priority

¶11. (SBU) Contributions to reduction in infringement levels can also occur through increased criminal justice cooperation. There has been some increased cooperation on international criminal IPR cases in 2006 through the bilateral Joint Liaison Group (JLG), although the numbers of cases thus far are too few to make a significant impact. Operation Ocean Crossing, the second joint U.S.-Sino law enforcement operation, resulted in the largest People's Republic of China (PRC) seizure of counterfeit pharmaceuticals in that nation's history. The joint investigation by Immigration and Customs Enforcement and Chinese law enforcement dismantled a major China-based transnational counterfeit pharmaceutical manufacturing and distribution organization engaged in the worldwide distribution of counterfeit Viagra and Cialis, with proceeds estimated in the millions of dollars. Also in 2006, China and the U.S. agreed to establish an IPR experts group under the Joint Liaison Group. Efforts have been made by U.S. law enforcement in the JLG to support JCCT efforts to promote sharing of forensic exemplars for optical media, which have thus far been unsuccessful.

Mission Supports An Appropriate WTO Case On IPR

¶12. (SBU) The lack of an effective criminal copyright remedy as well as overall high thresholds appear on the surface to be TRIPS violations and also support Priority Foreign Country designation. However, there are some serious considerations that may mitigate, in particular, against bringing a WTO case. First, lowering thresholds in and of itself may not result in any additional criminal cases. There are already numerous criminal IPR cases above relevant criminal thresholds which are rarely investigated or prosecuted. Moreover, China could also easily lower thresholds by requiring that cases at lower thresholds be privately, rather than publicly, prosecuted. Article 61 of the TRIPS agreement does not explicitly require public prosecutions of IPR crimes. (Note: In January 2007, the Supreme People's Court in fact issued an "opinion" encouraging more private prosecutions, which may be in anticipation of a WTO case. End Note). USTR itself has also identified other criminal IPR issues in its 2006 WTO Compliance Report, which include "the lack of criminal

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liability for certain acts of copyright infringement, the profit motive requirement in copyright cases, the requirement of identical trademarks in counterfeiting cases, and the absence of minimum, proportional sentences and clear standards for initiation of police investigations in cases where there is a reasonable suspicion of criminal activity." To these legal issues might also be added the misallocation of human resources to the administrative trademark system, which limits the amount of copyright administrative and police resources that can be dedicated to enforcement.

Civil Enforcement Increasing, But Foreigners Play A Small Role

¶13. (SBU) Although criminal enforcement has been a bilateral priority, IPR is "primarily a private right." (TRIPS Agreement, Preface). Deterrent civil enforcement also needs to remain a USG priority. An effective and adequate civil remedy is required to be made available for all TRIPS-defined IPR rights (TRIPS, Art. 41). Civil litigation of IP rights showed significant increases in ¶2006. IPR Tribunals accepted a total of 14,219 civil IPR cases in 2006, and closed 14,056, increases of six percent and five percent, respectively. The number of second

instance civil IPR cases accepted and closed in 2006 decreased to 2,686 and 2,656, or declines of 14 and 12 percent, respectively. Cases initiated and closed by IP right were: patents (3,196/3,227), trademarks (2,521/2,378), copyright (5,751/5,719), technology transfer contracts (681/668), unfair competition (1,256/1,188), and others (846/844). During the period from November 2005 to October 2006, there were reportedly 67 cases initiated for preliminary injunctions, and 69 cases were decided during that time period. The rate of granting preliminary injunction requests was reportedly 92 percent. There were 1,032 cases for evidence preservation, and 953 cases concluded, with a "grant rate" of 97 percent. There were also 560 asset preservation cases, and 494 cases concluded, with a grant rate of 95 percent. The "grant rate," which China cites indicates the effectiveness of these TRIPS-required measures, however, may overstate the percentage of the actual number of successful cases, as many cases are rejected by the case establishment ("li'an") division of the court, where cases are initially accepted for adjudication.

¶14. (SBU) The number of foreign-related cases is growing rapidly in absolute and percentage terms, but is still a small percentage of the overall IPR civil docket. There were several high profile civil IPR cases in 2006, including Pfizer's Viagra case and a case brought against an affiliate of Sohu by the Motion Pictures Association. In 2006, China's courts resolved 353 foreign-related civil cases of IPR violation at first instance trials, an increase of 52 percent over the previous year. The number

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of civil IPR cases related to foreign companies was 268 in 2005, up 78 percent from 2004. In total, from 2002 to 2006, China's courts settled 931 foreign-related civil IPR cases. Conservatively, however, the total of foreign cases is less than five percent of the overall civil IPR docket.

Mission Supports Overall Improvements in IPR Process and Adjudication

¶15. (SBU) The Mission continues to support USG agency efforts to improve civil process in China through adoption of "discovery" evidence production and other procedural safeguards, as well as China's streamlining of procedures regarding notarization/consularization of powers of attorney and other evidence. Efforts include working with the State Department on accession to the Hague Convention on Legalization of Foreign Public Documents as well as strengthening the expertise, deterrence, and independence of IPR adjudication in China.

IPR Courts Have Improved, Although Systemic Flaws Remain

¶16. (SBU) In its Section 301 report, IIPA notes that "the record of China's development of a cadre of well trained IPR judges to sit on specialized IPR tribunals at the intermediate level courts in China to hear civil cases has been a success." According to Chinese data, in 2006 there were 172 civil IPR courts, 140 IPR collegial panels, with 1,667 individual IPR judges. There are 62, 38, and 42 intermediate courts that can hear patent, plant variety, and layout design, respectively. In addition, there are 17 basic level courts. Additional basic level IPR courts were being added in early 2007, including in the Beijing area. While rights holders such as IIPA have commended the increasing expertise of the Chinese IPR courts, they still generally complain about such factors such as low damage awards, expenses and delays in adjudication, and lack of clear safeguards against corruption and political influence, all of which impair their overall effectiveness.

In some respects, the solution to improving the judiciary is to have fewer IPR courts at the local level, and to establish a national IPR court independent of local influence.

Improving Overall IPR Adjudication

¶17. (SBU) IIPA notes in its 301 Report that "China should implement similar reforms in the criminal justice system to enhance deterrent enforcement against copyright piracy." Some experiments are underway to combine some or all civil, criminal and administrative adjudication, including at the basic and intermediate court levels, which could assist in

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ensuring that courts develop greater expertise in criminal and administrative IPR matters by relying on the expertise and training developed in the civil division. Some Chinese IPR Agencies have also sought development of specialized national appellate IPR courts, like the U.S. Court of Appeals for the Federal Circuit, or of courts that combine civil, criminal, and administrative IPR adjudication (in comparison to the investment China has made in a national IPR judiciary at various levels, the United States has one national appellate patent court with 12 judges that also hears appeals from the U.S. Patent and Trademark Office, and has jurisdiction over a range of non-IPR matters). The Mission continues to support many of China's judicial reform efforts, along with other trading partners such as the European Union.

Administrative Enforcement Still The Most Common
Enforcement Vehicle

¶18. (SBU) As indicated by QBPC, criminal enforcement remains extremely important to rights holders, although most QBPC members in fact have little experience in its use. There is no comparable U.S. data we are aware of that points to the relative importance or unimportance of the administrative system to U.S. rights holders. Data from a 2006 Japanese government Field Survey shows that the administrative system was the principal enforcement remedy used by Japanese companies experiencing infringing activity, while other forms of enforcement are still relatively rare. Quantitatively speaking, the vast majority of China's IPR litigation is administrative. If all enforcement activities by agencies that can enforce an intellectual property-related right were collected, we estimate that the numbers of administrative IPR actions would likely easily exceed 75,000, and perhaps may equal 200,000 or more. However, many of these agencies, such as the State Administration for Radio, Television and Film; the Urban Management Departments of the Bureaus of Construction; the Technology Supervision Bureau of the Administration for Quality Supervision, Inspection and Quarantine, and the Tobacco Monopoly; do not separately report their IPR-related cases. The numbers of administrative officials involved in IPR matters, by Chinese government estimates, also may be in the range of 400,000, but such numbers are also difficult to calculate. Most of them are likely involved in trademark-related enforcement. Even China's understaffed copyright administrations have experienced some augmentation in staffing in some pilot projects by combining into "cultural task forces" with other copyright-related agencies, such as culture bureaus, radio, film and television bureaus, press and publication bureaus, city management officials (who control street side vendors), public security bureaus, and others.

¶19. (SBU) The Japanese Field Survey also points to

continuing problems in administrative enforcement. Japanese companies experienced a 42 percent increase in administrative actions on behalf of surveyed Japanese companies in 2005 compared to 2004. Confiscation of goods, suspension of operation, and fines -- the most significant penalties -- had all significantly increased. Among these companies, 27 percent believed that the execution of the legal measure under the law had been inappropriate. Of particular note is that confiscation and destruction of infringing equipment was rarely applied, and that 30 percent of firms suffered damages due to repeat offenses, an increase from 20 percent in the prior year. The problem of recidivist administrative offenses underscores a basic weakness of the 2004 Judicial Interpretation, which removed a prior "three strikes" rule, thereby effectively raising thresholds and failing to deter recidivism.

 Trademark Data Not Yet Available

¶20. (SBU) Among the various data available on IPR protection and enforcement, the Administration for Industry and Commerce, Chinese Trademark Office (CTMO) publishes useful data on trademark enforcement cases, including rates of referral, amounts of fines, case initiated ex-officio or upon complaint, and cases involving foreigners. These data were published in 2005, but have not yet been made available for 2006. Interim data suggest that the number of cases handled by AIC throughout the country in 2006 may have declined by about 13 percent, from 39,800 to 33,900, and that the number of cases involving foreign trademark holders may have increased by about 10 percent to 7,439. Among the key data points, only 111 cases were referred to criminal prosecution, or about 0.3 percent. This was a decline of 53% from 236 cases in 2005, and undercuts Chinese assertions that it is increasing criminal deterrence by improving cooperation between administrative and criminal authorities.

¶21. (SBU) In discussions the Embassy has had with the CTMO, it was suggested that this interim data may not include the entire end of year data and may need to be revised. IACC suggests in its Section 301 submission that this data may reflect an increase in small scale raids on an ex-officio basis.

¶22. (SBU) Despite these negative trends, during 2006, AIC had been responsive to several requests involving IPR enforcement. For example, AIC issued a directive involving the Lance Armstrong Foundation, which resulted in some enforcement activities on behalf of that charity. AIC had also closed down a website, www.xiangyangmarket.com, which involved the cooperation of several provincial authorities. SAIC also began to address in a more systemic manner the problems associated with abusive registrations in early 2007, including cooperating with the USG on these issues

and issuing guidance on abusive registrations by natural persons. Of particular note, SAIC had directed local AICs to take steps against local markets. At the IPR Working Group, it was revealed that in Guangdong Province alone, AIC had conducted investigations of 30 markets and 230 shops, in which 208 cases of infringement had been uncovered, of which 116 involved foreigners. As with trade fair statistics (noted below), this data underscores the particularly adverse impact that local markets have on foreign rights holders.

¶23. (SBU) China's administrative copyright system continues to suffer from several basic limitations. According to a recent Chinese government analysis the reasons for weakness in copyright enforcement are threefold: (a) lack of emphasis by many local enforcement agencies. Although special campaigns began enthusiastically, there was no timely follow-through; (b) certain copyright industry officials lack adequate knowledge on copyright, and are using pirated products or engaged in piratical activities, especially in the Internet environment; and (c) inadequate enforcement human resources and IP knowledge, especially at the local level. To these challenges might be added the legal requirement that copyright administrations only take enforcement actions that affect the "public interest" which may limit certain types of enforcement, such as software end user piracy.

¶24. (SBU) Copyright administrative enforcement data for 2006 is not yet available. During 2005, there were 9,644 copyright cases handled by copyright bureaus throughout China. Among these cases, 366 were referred to criminal prosecution, while 7,840 involved fines. Cases were concentrated in Liaoning, Shandong, Guangxi, Guangdong, and Sichuan. Only 38 cases "involved foreigners." The three principal regions for enforcement were Guangdong, Beijing and Shanxi. These cases presumably involved complaints by foreign rights holders and may underestimate the number of ex-officio cases involving foreign rights holders or involving foreign rights holders' products mingled with domestic products. The referral rate to criminal prosecution in 2004 was 1% or 101 out of 9,691 cases; in 2005 it was 3.8%, or 366 out of 9,644 cases.

Numerous Copyright-Related Campaigns in 2006

¶25. (SBU) There have been several copyright-related administrative campaigns in 2006. Among the copyright-related administrative campaigns and activities were:

March 30 - a circular was issued by MII, NCA, Ministry of Finance (MoF) and Government Offices Administration of the

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State Council to require all government entities at national and sub-national levels to procure and provide sufficient funds to procure only PCs that are preloaded with legitimate operating system software.

Late April - an enterprise legalization plan was jointly issued by the NCA, MII, MOFCOM, MoF, State-owned Assets Supervision and Administration Commission of the State Council (SASAC), All-China Federation of Industry and Commerce, China Banking Regulatory Commission (CBRC), China Securities Regulatory Commission (CSRC) and China Insurance Regulatory Commission (CIRC).

Early June - NCA issued a notice to launch a campaign against hard-disk loading piracy as a step to implement the circular on pre-loading of legal operating system software.

July 14 - China announced a 100 day campaign directed primarily at retail piracy. Although there was a vast quantity of raiding, the results of the campaign did not significantly reduce retail piracy. Industry surveys generally showed that availability of pirated product had declined during the campaign; however, pirated discs were still available at virtually the same level. In some instances, the discs were removed to a back room or for ordering via catalog. Also during the 100 day anti-piracy campaign, the Ministry of Public Security reportedly was engaged in over 2,300 cases. 28,316,000 illegal publications were seized, 2,480 people detained, and

criminal detentions and arrests for 379 people.

August 2006 - China launched an Internet piracy campaign. During the four month crackdown ending in January, NCAC and its local offices investigated/handled 436 cases, imposed fines totaling RMB700,000 (USD90,000), and shut down 205 illegal websites. Six cases had reportedly been transferred to courts for prosecution; one led to a conviction. According to press reports, NCAC had pursued nearly 130 cases brought by overseas copyright holders during the campaign, and 90 percent has been concluded.

August 24 - The National Antipornography and Piracy Task Force (NAPP) issued a notice to copyright, press and publication and education bureaus regarding strengthening enforcement against university campus textbook piracy during the 100 day campaign.

October 9 - General Administration of Press and Publications, Ministry of Education and National Copyright Administration issued an additional notice regarding cracking down on piracy of foreign textbooks.

November 10 - The Ministry of Education issued a notice concerning cracking down on piracy of foreign textbooks. A total of seven textbook piracy decisions were issued by year-end 2006.

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Limited Copyright Enforcement Against End User Piracy,
Broadcast Piracy

¶29. (SBU) There have been other year-long efforts undertaken on behalf of copyright interests. In the area of software end-user piracy, local copyright authorities, according to BSA, have taken 22 administrative actions against enterprise end users based on BSA complaints but only two administrative penalties were issued. There has been virtually no publicity surrounding these raids without penalties so they go unnoticed by the business community. Some cases were cut short when the raiding team was refused entry.

¶30. (SBU) Broadcast, cable, and public performance piracy continues to be a problem in China. The problem was also noted this year in a submission by CASBAA, which has recently increased its anti-piracy enforcement efforts in China. The Mission has raised this issue from time to time, most recently in a meeting with the Beijing Law Enforcement Culture Task Force, which noted that it has undertaken administrative enforcement to stop the distribution of illegal cable piracy set-top boxes. The problem, however, continues to be pervasive.

¶31. (SBU) Also in 2006, cultural authorities launched the "Sunshine Campaign" to clear up audio-visual markets. The campaign investigated 10,330 cases involving 3,184 enterprises, with RMB1.98 million in illegal profits confiscated, and RMB 41.68 million in fines imposed. Licenses were revoked for 728 infringing companies.

Optical Disc Piracy

¶32. (SBU) In 2005, Ambassador Portman sent a letter to Chinese Ambassador Zhou Wenzhong requesting the closure of certain identified producers of optical discs. China's response to this letter has been neither comprehensive nor transparent. While some Chinese officials had complained that some of the titles identified in the letter were beyond the term of Chinese copyright protection, that certain production lines had already been closed and/or

their owners punished, and that certain complaints were beyond the statute of limitations for administrative enforcement, there was no effort to respond to the letter in its entirety.

¶33. (SBU) According to Chinese press reports and information from the JCCT IPR Working Group, 14 pirated optical disc production lines were closed by China in 2006. At the December 2006 JCCT IPR Working Group, the National Copyright Administration explained that during 2000-2005, China had taken action against 48 replicators. Of the 14 cases closed by China, it was further reported that only one factory was referred

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to criminal prosecution.

¶34. (SBU) In May 2006, Embassy visited the newly relocated Disc Production Source Identification Center (DPSIC) in Shenzhen. DPSIC, which falls under the Ministry of Public Security, reportedly holds China's only complete exemplar library of optical discs produced in China and is also the only lab to house sound spectrogram and optical media "fingerprinting" equipment to conduct forensic analysis. (Note: At a meeting in February with Vice Minister Liu Binjie of the General Administration of Press and Publications (GAPP), Minister Liu denied that the DPSIC holds a complete exemplar library and advised that it only collects exemplars when a factory is under investigation. End Note.) The lab can only identify discs produced on legally registered production lines. On-site inspectors from GAPP are posted at every optical disc replicating facility in China in order to monitor disc titles and production equipment. The lab's director, though open in discussing technical and procedural issues, expressed no interest in formally cooperating with foreign industry groups, arguing that such cooperation would be inconsistent with the organization's need to maintain objectivity.

¶35. (SBU) Most U.S. industry groups and companies have described DPSIC as opaque and uncooperative and have been particularly frustrated with DPSIC's requirement that only domestic entities submit cases, the burdensome evidentiary requirement for submissions, and the long waits to obtain results.

State Food and Drug Administration

¶36. (SBU) During 2006, the Embassy actively supported several efforts to improve IPR protection for the pharmaceutical industry, including a seminar with the Japan and European patent offices, as well as advocacy for criminal pharmaceutical law reform.

¶37. (SBU) China's pharmaceutical anti-counterfeiting regime suffers from the substantive and procedural deficiencies of its IPR regime. During 2006, there were several negative developments, including several high profile cases involving counterfeit pharmaceuticals, continued proliferation of counterfeit drugs from China in markets throughout the world, continuing harm to Chinese patients, and increasing concerns over corruption in SFDA across a wide range of areas. At the same time, there has also been a reluctance of the Chinese government to address problems such as lack of protection of data exclusivity, integrity of clinical data submissions for marketing approval, as well as legislative reform of China's counterfeit pharmaceutical law. SFDA has itself been criticized for possibly selling or releasing clinical data to generic competitors of innovator companies. Regarding its counterfeit pharmaceutical law, China needs to amend the

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law to conform to World Health Organization standards under which a drug that is deliberately misidentified as to source or identity, of whatever quality standard, is deemed a counterfeit.

¶38. (SBU) According to China's own data, enforcement against counterfeit pharmaceuticals remains chronically weak. Jin Shaohong, the first vice president of National Institute for the Control of Pharmaceutical and Biological Products, estimates counterfeit medicines at 5-10 percent of the China medicines market. China also continues to be a major source of counterfeit pharmaceuticals worldwide. During a 2004 special campaign by SFDA, there were 154,000 enforcement man-visits, involving 10,400 individuals, with fines of RMB1.653 million. As a result of this activity, 14 establishments were rectified, and only one had its license revoked. Only two cases were referred to criminal prosecution. In 2005 31,000 cases of fake and inferior drugs and medical appliances were handled, with value of RMB51.4 million, 59 licenses canceled, 530 counterfeit medicine workshops were destroyed, 214 cases transferred to PSB, and 36 criminals punished. The "referral rate" was only 0.69 percent. Problems of counterfeiting pharmaceuticals have also been identified by the U.S. Pharmacopeia in evaluating drug quality in USAID assisted projects (Primo-Carpner and McGinnis, Matrix of Drug Quality Reports in USAID-Assisted Countries, July 2006). Counterfeit Chinese artesunate, which may be manufactured in China has been identified as a possible reason for increasing malaria resistance. According to the industry-led Counterfeiting Incident Reports, China experienced the highest number of counterfeiting incidents -- 155 compared to 96 for the number two country, Russia. (Kubic, Pharmaceutical Counterfeiting Trends: Understanding the Extent of Criminal Activity, Journal of Biolaw and Business (2006). The system needs to be seriously improved.

China Remains a Principal Concern Over Export of Infringing Goods

¶39. (SBU) By almost any measure, China is a major source of infringing goods worldwide. More QBPC members cited China-origin counterfeit exports as accounting for at least USD 1 million in lost revenue than cited any other country. Twenty-two percent of members estimated more than USD 1 million in lost revenue due to counterfeit exports originating in China; only 14 percent of members estimated equivalent losses due to exports originating from other countries. Worldwide, the OECD's preliminary estimate is that 80 percent of IPR seizures by Customs authorities originated from only ten countries, with China ranking the highest at 32 percent. As reported by the ICC's Business Alliance to Stop Counterfeiting and Piracy, approximately two-thirds of Europe's seizures of infringing goods originate from China.

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¶40. (SBU) According to U.S. Customs and Border Protection, IPR seizures from China of infringing goods increased in both relative and absolute terms in 2006 to 81 percent of the total domestic value of all customs IPR seizures. Hong Kong represented an additional six percent. The total value of seizures from all countries was USD 155,369,236 with 14,675 total seizures. China-origin seizures in FY 2006 were USD 125, 594,844, or almost double USD 63,968,416 in FY 2005. Footwear represented 49 percent of U.S. seizures from China in FY 2006, an increase from 12 percent the prior year.

¶41. (SBU) U.S. Customs seizure data are one of the few benchmarks that the U.S. government collects regarding the

magnitude of the IPR problems in China. However, the total volume of Customs seizures is a fraction of a percent of total Chinese exports to the U.S. in 2006 and seizures may not correspond to the incidence of piracy and counterfeiting. For example, exports of media and pharmaceuticals, known to be major categories for Chinese piracy and counterfeiting, represented only two percent and one percent, respectively, of the total FY 2006 Customs IPR seizures from China, and were too negligible to separately report in 2005.

¶42. (SBU) Chinese seizures in 2006 increased dramatically. According to recent speeches by Chinese Customs officials, in 2006 there were 2,473 trademark related cases involving 196.8 million infringing goods with a value of over RMB 200 million. These numbers suggest increases of more than 100 percent. In 2005, 98 percent of China's Customs seizures by value were export-related, while 96 percent of the cases were export-related. In addition, the vast majority of all 2005 seizures were trademark-infringing goods -- 1,106 in 2005, versus 67 for copyright and 37 for patents. Total seizures in 2005 were only RMB 99,780,000, or about USD 13 million. Both 2005 and 2006 seizures were a fraction of U.S. seizure levels. Chinese data show that 36 percent of seizures in 2005 were for apparel, footwear, and caps, while less than one percent was for medicines and medical appliances.

¶43. (SBU) The relatively high level of apparel seizures is consistent with U.S. Customs as well as overall OECD data on trade in counterfeit goods, which show that clothing and apparel were among the principal goods seized by the six countries with the largest numbers of seizures worldwide, including China. See OECD Report.

¶44. (SBU) Notwithstanding this data, exports of optical media and pharmaceuticals from China continue to be major problems, further underscoring the limitations of Customs seizure data for analyzing worldwide trends in infringing goods. IIPA reports that infringing optical media from China has been found in nearly every major market in China, including but not limited to Germany, Italy, Australia,

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Norway, Belgium Canada, Mexico, the United States, Russia, the United Kingdom, Netherlands, Israel, Paraguay, Lithuania, Singapore, Taiwan, the Philippines, Indonesia, Vietnam, Hong Kong, Malaysia, Thailand, Chile, New Zealand, and South Africa. U.S. law enforcement has also been involved in cases involving the export of pirated optical media from China. In 2006 more than 75,000 Chinese-origin counterfeit Nintendo products alone were allegedly seized in 13 countries around the world. Counterfeit Chinese pharmaceutical products have also been found throughout the world. The impact of counterfeits is particularly severe in the developing world, including Africa. (See, e.g., Nigeria criticizes China over counterfeit threat, Daily International Pharma Alert. Feb 14, 2006; vol. 3, no 31. Available from www.fdanews.com; see also OECD Report).

¶45. (SBU) The USITC provides an administrative procedure that closely follows U.S. civil IPR procedures, under Section 337 of the Tariff Act of 1930, to exclude goods that infringe patents and other rights from entering the U.S. market. Fiscal year 2006 reportedly set a new high for Section 337 cases. The USITC launched a record 40 section 337 proceedings between October 1, 2005, and September 30, 2006. According to statistics from China's Ministry of Commerce (MOFCOM), by the end of June this year, USITC had instituted 52 Section 337 investigations against Chinese companies. Although China occasionally questions the TRIPS-compatibility of the US Section 337 remedy, border measures against products that infringe patents may become increasingly important as Chinese exports continue to increase and may play an increasingly

important role to the many companies frustrated in their efforts to stop infringement or gather evidence within China.

WTO and Other Strategies on Exports of Pirated and
Counterfeit Goods

146. (SBU) China's export-related border measures are not required by the TRIPS agreement. While there are aspects of the regime that are problematic, such as the manner by which Chinese Customs disposes of counterfeit goods, the availability of an export remedy is in fact "TRIPS-plus," that is, China need not have an administrative export regime to satisfy the plain meaning of the TRIPS provisions regarding border measures. The following are steps that have been considered to further deter infringing exports.

QImproving criminal enforcement over exports of counterfeit goods should continue to be a priority. China is obligated under TRIPS Article 61 to have criminal remedies against commercial scale counterfeiting and piracy. Exports of such goods should also be considered such a "commercial scale" activity. Such efforts were begun in 2004 with the revised Judicial Interpretation, and again in 2006 with referral procedures put in place and

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several criminal cases.

QExperiments in Ningbo have shown that increasing inspection resources can reduce the numbers of domestic seizures of exported goods. We may encourage a reallocation of resources to key ports that are the source of infringing goods. While we are impressed with seizures undertaken by IPR officials in remote areas, such as Lhasa, IPR enforcement resources in China need to be more closely tied to evolving risk assessments.

QThe track record of the sporting goods industries shows that one of the more effective ways of increasing seizures is by supporting broad identification and intelligence sharing between business and Customs officers.

QChina should address legislative deficiencies in its export regime. The Ministry of Culture's AV regulations do not require licensing for the export of optical discs, but only for import, sales, and distribution. We have raised this several times with MOC, to no effect. This limits the availability of other criminal remedies, such as illegal business operations for export-related transactions. Similarly, MOFCOM has the authority under China's Foreign Trade law to revoke licenses or impose penalties for companies engaged in the trade in infringing goods, which MOFCOM had previously promised the USG to use to deter companies that export infringing goods. To our knowledge, such efforts have also not taken place. As discussed at the December JCCT IPR Working Group, other agencies, such as AIC can also revoke business authority for companies operating Internet sites or business licenses for exporters.

QEnhancing customs cooperation of China with U.S. Customs and third country Customs and trade officials can also help improve intelligence and thereby facilitate enforcement.

QSystemic problems, such as recycling of seized goods through charities (which may occur without removing the infringing marks), might also be addressed elsewhere, such as in the current draft of the revised Trademark Law. Such recycling efforts have regrettably been applauded in the Chinese press. See e.g., "Hangzhou Customs Donates 1 Million Seized Infringing Goods to the Red Cross" (China Intellectual Property News, March 2, 2007, at 5.)

QWe can also use training programs such as the current Trade and Development Agency IPR Customs training program in Shanghai to advance many of these goals, as well as global efforts under the STOP initiative.

Other Administrative Efforts

¶47. (SBU) There have been several efforts undertaken in

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2006 to make the administrative system more "user-friendly" and effective. Three of these efforts involved the "Blue Sky Campaign" to improve administrative enforcement at trade fairs, and the establishment of a nationwide system of IPR complaint centers in 50 cities throughout China, as well as an effort to improve local copyright enforcement by combining resources of the copyright-related agencies, such as the Ministry of Culture, Copyright Administration, Press and Publications, and Radio, Film and Television Bureaus.

Blue Sky/Trade Fairs

¶48. (SBU) At the start of 2006, various local governments and trade fair organizers had established policies or local regulations regarding the reporting of IPR infringements at trade fairs. The Canton Trade Fair, China's largest, has had an IPR complaint center for several years. In 2006, the central government took a more active interest in this area. The Ministry of Commerce, in conjunction with other IPR-related ministries, promulgated the "Protection Measures for Intellectual Property Rights during Exhibitions" on January 1, 2006 (effective March 1, 2006). The Rules recommend that trade fairs of three days or more set up IPR complaint centers staffed by personnel from local patent, trademark, and copyright bureaus. The guidelines operate on a "three strikes" principal, requiring rights holders to enforce their rights against an infringer at three consecutive fairs before consequences beyond warnings are incurred.

¶49. (SBU) On May 29, 2006, MOFCOM and other ministries unveiled the Blue Sky Campaign to help implement the earlier promulgated "Measures." The Blue Sky Campaign includes development of guidelines for reporting IPR infringement at trade fairs. On-the-spot trade fair enforcement is typically a weak remedy, since evidence may be hard to obtain, companies may have little infringing merchandise available, and typically only a scaled down type of Chinese administrative enforcement is made available. U.S. rights holders may also have difficulty locating hard-to-find complaint centers, staffed by non-English speakers, with simple complaint forms that are only available in Chinese. Evidentiary requirements to document IP rights as well as powers of attorney, including notarizations and consularizations, can be inconsistent and overly burdensome by international norms. Moreover, rights holders have confirmed that at some fairs, contrary to the guidelines, local IPR authorities have refused to be involved, even after being properly contacted by fair organizers. A litigation brought by one U.S. rights holder in Shanghai for failure to recognize an obligation to enforce IPR rights was dismissed by a Shanghai court. Thereafter, the organizer banned the rights holder from exhibiting in trade fairs unless the litigation strategy was entirely dropped. Finally, when U.S. rights holders

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have adequately documented their rights, alleged infringers

are typically "punished" with a warning to remove offending products from their displays; in some cases, infringers replace offending products once they think "the heat is off."

¶50. (SBU) Apart from these remedies, we are unaware of any effort to secure civil or criminal judicial relief by reason of a trade fair infringement. In certain instances, Chinese law needs to clarify when an "offering for sale" constitutes an infringement of rights, and what remedies are available. At the JCCT IPR Working Group in December 2006, it was revealed that during the most recent Canton Trade Fair, 472 complaints had been accepted, of which 419 cases were determined to have involved IP rights, and 182, or 38 percent, involved foreign rights holders. This high level of foreign-related complaints further underscores the importance of an effective trade fair remedy. We appreciate, however, efforts by MOFCOM to establish IPR complaint centers to address trade fair infringements, and we look forward to working with MOFCOM and local trade fair organizers to achieve meaningful and effective IPR enforcement at trade fairs. With the FY 2007 launch of USDOC's Initiative to Protect IPR at Trade Fairs for events DOC sponsors or supports, the Foreign Commercial Service and USPTO will benchmark and monitor the effectiveness of IPR protection at Chinese trade fairs and will engage trade fair organizers to improve ineffective policies and procedures as a condition for future USDOC support.

Patent Administrative Enforcement of Continuing Limited
Utility to Americans

¶51. (SBU) Administrative enforcement of patents has historically not been a priority for USG, in part because the U.S. lacks a criminal patent infringement law but instead uses deterrent civil remedies. Administrative patent infringement cases initiated in 2006 totaled 1,270; in addition 973 cases were concluded during this period. Only 16 percent of the patent cases involved invention patents, which are of primary concern to foreigners. In fact only 7.5% of the administrative patent infringement cases involved foreigners. There were 43 other types of patent cases, of which 21 were concluded. Among these "other types" of cases, the principal disputes involved patent ownership (67%) and rights to remuneration for patent filings for service inventions (25%). There were 33 counterfeit patent cases, and 933 instances of passing off of patents (passing non-patented products off as patented products or of passing non-patented processes off as patented processes) and 12 cases were referred to criminal prosecution. This referral rate is in fact higher than many other IPR administrative agencies.

Overall Administrative Enforcement is Pervasive and

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Difficult to Assess

¶52. (SBU) There are other active areas of administrative enforcement in China that may implicate IP Rights. For example, the State Tobacco Monopoly investigated 330,000 counterfeit cigarette cases in 2006, a decrease of five percent from the 347,000 cases in 2005. A total of more than nine billion counterfeit cigarettes was seized in 2006, an increase of 24 percent over 2005. Perhaps due to the lost tax revenue, China arrested 6,334 people and sentenced 2,313 people for cigarette counterfeiting, increases of 19 and 36 percent, respectively. Chinese-origin counterfeit tobacco products have been the subject of U.S. criminal investigations and customs seizures as well. The total volume of arrests and convictions is much greater than the arrests and convictions under China's

criminal IPR laws previously noted, perhaps due to lost tax revenue.

¶53. (SBU) Another area is fake and shoddy goods. These cases are brought by the Technology Supervision Bureau of the Administration for Quality Supervision, Inspection, and Quarantine (TSB). During 2006, there were reportedly as many as 180,000 such cases. Fake or shoddy goods valued at 3.1 billion RMB were also destroyed. From January to October 2006, 111 such cases were transferred for criminal investigation. Although foreign rights holders do use the TSB to pursue counterfeiters, it is unclear from the data

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how many such cases involved trademark counterfeiting.

¶54. (SBU) Other agencies with administrative enforcement authority include: the Ministry of Agriculture for counterfeit seeds and production materials, the Ministry of Construction and Municipal Supervision for regulation of vendors of pirated or counterfeit goods, and the Ministry of Public Security for a wide range of offenses. In addition, the civil courts have authority to refer criminal matters to criminal prosecution, which is rarely done.

Coordination and Referral Issues: The Structure Remains
Overly Complex

¶55. (SBU) China's IPR system is largely ineffective, but not due to a lack of enforcement activity. Today's China may be the most litigious IPR society in the world, with among the lowest level of overall effectiveness and the highest complexity due to overlapping authorities, laws, regulations, rules, local practices, etc. China urgently needs higher quality, deterrent enforcement with a minimum of procedural baggage. China's current system establishes a brisk market for "forum shopping" where rights holders should be maximizing their enforcement dollar among various alternatives of varying ineffectiveness which involve different costs, advantages, and disadvantages, including varying enforcement at local levels. Rights holders may

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also be considering seeking overseas enforcement as a costly but more limited alternative.

¶56. (SBU) Viewed as a system with multiple competing fora, the relatively high level of civil copyright litigation likely reflects both the high incidence of piracy and the relative weakness of the copyright administrative and criminal enforcement system, thereby forcing victims to bring civil litigations in lieu of criminal or administrative complaints. By contrast, the relatively high level of administrative and criminal trademark litigation results in a proportionately low level of civil trademark adjudication. Moreover, the low level and effectiveness of patent and trade secret litigation increasingly forces foreign litigants to bring cases overseas, such as through Section 337 cases in the United States or even through criminal cases brought overseas.

Chinese Ministries Have Sought Greater Coordination in 2006

¶57. (SBU) In 2006, national and local Chinese ministries issued several documents guiding the referral and coordination of administrative, criminal, and even civil cases. Many of these documents suggest useful means to further coordinate and improve IPR enforcement, particularly criminal IPR enforcement. At a national level, the procuratorate, public security, copyright, customs, trademark and other authorities jointly promulgated four rules including the "Regulations on Timely

Transfer of Suspected Criminal Cases in Administrative Enforcement" and "Provisional Rules on Strengthening Coordination in Combating IP-Related Crimes." In addition to this effort, in April 2006, the National Working Group for IPR Protection formulated China's Action Plan for IPR Protection 2006, including 160 separate measures. Part of these measures included setting up 50 staffed IPR complaint centers throughout China, which was completed in 2006.

Ministry of Public Security Launches Mountain Eagle 2 Campaign

¶58. (SBU) During 2006, MPS launched the Mountain Eagle 2 campaign, which appears to have resulted in increased arrests and seizures of infringing materials, although the disposition of seized goods and the outcomes of criminal cases remain largely obscured by lack of transparency. MPS reported over 3,000 cases being established, 2,300 cases "cracked" and investigations of 3,600 suspects. In response to U.S. requests, MPS also assembled an internal IPR coordination steering group on a national and local level to better integrate the various divisions of MPS and local PSBs involved in IPR crime. This group has provided support for many cases, as well as useful training and engagement. For example, MPS sponsored a program in 2006

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on how to file a criminal copyright case that was supported by the U.S. Embassy and attended by U.S., foreign, and Chinese rights holders. In the critical area of exports, Chinese customs has reportedly attempted to transfer at least 20 cases to the Public Security Bureaus for investigation. Additional data is needed before judging whether there have been demonstrably more referrals of administrative trademark and copyright cases.

Human Rights Concerns in IPR Enforcement

¶59. (SBU) Efforts to improve IPR enforcement in China also need to be geared to other key issues, such as protection of human rights and rule of law. Some of those concerns involve freedom of religion and information. In many instances, the ethical consequences need to be carefully weighed. For example, "illegal business operations" cases have been brought against individuals who distribute bibles. China's recent complaints against piracy of Chinese movies on U.S. cable television stations may also be directed towards the outlawed cult "Falun Gong," which may be an investor in many of these stations. Culture bureaus that bring copyright or illegal business operations cases also function as censors of information, which raises concerns about how strongly we should strengthen their operations.

¶60. (SBU) Generally speaking, the Mission believes that the protection of private property, rule of law, and IPR are mutually compatible messages. Occasionally, however, punishments may be imposed without proper process or in a disproportionate manner. For example, the Nanjing City IPR Whitepaper released in 2006 identified several instances where re-education through labor has been used for IPR offenses, perhaps for juveniles. There have been several reported instances where organized criminal groups have hired pregnant or nursing women, or minors, in order to evade liability. There were also cases in 2006 where rights holders were able to detain or imprison infringers for several months without trial. As was discussed at the first Ambassador's roundtable on IPR in 2002, U.S. rights holders in China generally recognize that good IPR protection and enforcement must occur in an environment where rule of law is protected, and our efforts should be geared to ensuring such procedures are in place.

Other Industry/Government Efforts

¶61. (SBU) There were several efforts under way in 2006 to improve cooperation between U.S. business and the Chinese government. Various industry copyright trade associations executed memoranda of understanding with the Chinese Ministry of Culture, National Copyright Administration, State Administration of Radio, Film, and Television and

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others to improve copyright protection. MPAA and BSA executed another agreement with the National Copyright Administration of China to enhance our collective efforts to combat Internet piracy. Local MOUs have also been undertaken, such as with the Chaoyang District government in Beijing (where the Embassy is located) to improve copyright enforcement and coordination, and an MOU between the U.S. Chamber and Jiangsu government. Other agencies, such as the Ministry of Public Security, have also sought MOUs with U.S. industry. The European Chamber concluded an agreement regarding assistance with the IPR complaint centers in Guangdong and Jiangsu, while the U.S. Chamber is also building a network of MOUs to improve local cooperation. Many of these efforts are geared towards improving administrative enforcement. The MOU signed by the Motion Pictures Association in conjunction with the 2005 JCCT has generally resulted in some increased transparency on enforcement issues and responsiveness to specific requests for action. Industry hopes that the NCA MOUs will bring concrete results despite the severe resource limitations imposed on NCA.

¶62. (SBU) The MOUs with copyright-related agencies appear to target pre-release and early-release piracy. China has achieved limited success in this area, including the release of "Shrek 2," as well as with the Chinese movie "The Promise" in Jiangsu Province. However, such efforts are frequently constrained by administrative resources and penalties.

Conclusion: The Challenge of Coordination to Support the IPR Agenda

¶63. (SBU) The IPR issues in China continue to become more complex. The Mission has been proud to support activities that provide a platform for sharing of information on IPR issues. Because of these complexities, we believe it is critical that USG agencies continue to adopt as inclusive an approach as possible in the 301 process and other IPR-related negotiations. The Mission supports continued Section 306 Monitoring and Priority Watch List status for China, as well as a possible WTO case if negotiations cannot resolve the problems to the satisfaction of USTR and industry.

¶64. (U) Post welcomes inquiries on IPR issues in China, and would be pleased to provide further details and clarification, as necessary.

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